

BEFORE THE OFFICE OF CAMPAIGN FINANCE
DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS
FRANK D. REEVES MUNICIPAL BUILDING
2000 14TH STREET, N.W., SUITE 420
WASHINGTON, D.C. 20009
(202) 671-0550

IN THE MATTER OF)	
)	DATE: January 30, 2006
Committee to Elect)	
David Bowers)	DOCKET NO.: OCF FI 104-05
Antonio Payne, Treasurer)	
4005 20 th Street, N.E.)	
Washington, D.C. 20018)	

ORDER

Statement of the Case

This matter came before the Office of Campaign Finance (OCF) pursuant to a complaint filed by Chuck Thies of 1660 Park Road, N.W., No 101, Washington, D.C. 20010. Mr. Thies alleged that on June 22, 2005, then-candidate for the District of Columbia Council, At-Large, David Bowers, held a formal announcement of his candidacy in the "Cosmopolitan Room" at Ben's Chili Bowl Restaurant, located at 1213 U Street, N.W. According to Mr. Thies, in an advertisement therefor, the Cosmopolitan Room rents for a minimum of \$250 per hour and the Committee to Elect David Bowers (respondent) failed to report the use of the room as an "in-kind contribution." Mr. Thies further alleged that individuals each with an ownership interest in Ben's Chili Bowl Restaurant made contributions in excess of the maximum allowable under the law from a single entity to respondent.

Issues

1. Whether respondent violated D.C. Official Code § 1-1102.06 when it allegedly failed to disclose, as an in-kind contribution, the cost of the June 22, 2005 use of the Ben's Chili Bowl Restaurant Cosmopolitan Room when it formally announced the candidacy of David Bowers for At-large Member of the D.C. City Council.
2. Whether respondent violated D.C. Official Code § 1-1131.01(a)(3) when it allegedly received contributions from the Ben's Chili Bowl Restaurant and its owners and their relatives which exceeded the limitation of \$1000 in support of a candidate for the office of At-large Member of the D.C. City Council; and, correspondingly, whether these persons¹ violated D.C. Official Code § 1-1131.01(a)(3), when they allegedly made contributions which exceeded the limitation of \$1000 in support of a candidate for the office of At-large Member of the D.C. City Council.

¹ It will be determined later whether an investigation of these persons may be warranted.

Background

OCF reviewed and accepted the complaint from Chuck Thies on October 4, 2005. See Attachment A. A copy of the complaint was sent to Nizam Ali and the treasurer for the respondent, Mr. Payne. They responded by letter dated, respectively, October 14 and October 15, 2005. See Attachments B and C. Whereupon, OCF summoned and queried Messrs. Ali, Payne and Bowers. The scope of the OCF investigation encompassed reviewing and researching documents, verifying and evaluating testimony, scheduling and conducting in-person interviews and examining the statutes. The investigation ended on January 6, 2006.

Relevant Statutory and Regulatory Provisions

D.C. Official Code §1-1101.01(6)(A) defines “contribution” to mean, in part:

- (i) A gift, subscription (including any assessment, fee, or membership dues), loan (except a loan made in the regular course of business by a business engaged in the business of making loans), advance, or deposit of money or anything of value, made for the purpose of financing, directly or indirectly, the election campaign of a candidate or any operations of a political committee or the campaign[and]
- (ii) A contract, promise, or agreement, whether or not legally enforceable, to make a contribution for any such purpose[.]

D.C. Official Code §1-1101.01(8) defines “person” to mean “an individual, partnership, committee, corporation, labor organization, and any other organization.”

D.C. Official Code §1-1131.01 states, in part:

- (a) No person shall make any contribution which, and no person shall receive any contribution from any person which, when aggregated with all other contributions received from that person, relating to a campaign for nomination as a candidate for election to public office, including both the primary and general election or special elections, exceeds:
 - (3) In the case of a contribution in support of a candidate for member of the Council elected at-large[,] \$1,000[.]

At 3 D.C.M.R. §3711.2, fines shall be imposed for the following:

- (o) Accepting contributions in excess of contribution limitations, \$2000; and
- (p) Making contributions in excess of contribution limitations, \$1000.

At 3 D.C.M.R. §9900.1, “[i]n-kind contribution” is defined as “a contribution of goods, services or property by the contributor to a political committee[.]”

Summary of Evidence

Nizam Ali responded by letter dated October 14, 2005. Among other things, Mr. Ali stated that many of the persons in attendance at respondent's announcement purchased food at Ben's Chili Bowl Restaurant. He said that the restaurant did not provide any food or drinks for free. See Attachment B.

Antonio Payne responded by letter dated October 15, 2005. Among other things, Mr. Payne stated that the Cosmopolitan Room "was used merely as a backdrop wherein David Bowers announced his candidacy and Virginia Ali of Ben's Chili Bowl, announced her endorsement thereof." See Attachment C.

On December 1, 2005, Nizam Ali of Ben's Chili Bowl Restaurant (Ali Testimony), Antonio Payne (Payne Testimony), treasurer of the respondent, and David Bowers (Bowers Testimony), then-candidate for At-large Member of the D.C. City Council, appeared at the OCF offices for recorded interviews. The interviews were conducted by William O. Sanford, Senior Staff Attorney.

Mr. Ali stated under oath that he manages Ben's Chili Bowl Restaurant. He said that the restaurant is open from Monday through Saturday from 6:00 a.m. until 2:00 a.m.; and, on Sunday, it is open from 12:00 p.m. until 8:00 p.m. Mr. Ali said that Ben's Chili Bowl Restaurant is always open to the public; and, although the use of the Cosmopolitan Room is advertised on its website for \$250 per hour, it has never been imposed because he found that it was not economically sound to rent the space exclusively to any other entity. According to Mr. Ali, for anyone who has met for any event or meeting in the Cosmopolitan Room, it has always been understood that Ben's Chili Bowl Restaurant remains open to the public. He continued that no contract has been executed for its exclusive use by any person or organization. Mr. Ali noted that other users of the facility included the American Cancer Society, which hosted a program featuring Smokey Robinson during the summer of 2005; and, Mayor Anthony Williams, who held a press conference at the location after his election in 1998. He also stated that the fee contemplated would have been exceeded by the purchase of food by patrons; thus, in his opinion, it would not be in the financial interest of the restaurant to operate the Cosmopolitan Room as an exclusive meeting or banquet room. Mr. Ali volunteered that the restaurant operates as a sole proprietorship, which is owned by his father, Ben Ali; and, that he and the contributors questioned by complainant are employees of the restaurant. He concluded that they contributed to respondent as individual donors and that they did not exceed the contribution limits.

Mr. Payne stated under oath, that as treasurer, he neither requested nor received exclusive use of the Cosmopolitan Room at Ben's Chili Bowl Restaurant. He said that arrangements were made informally by Mr. Bowers who wanted the location as a backdrop for a press conference, in which he announced his candidacy for the District of Columbia Council At-Large.

Mr. Bowers stated under oath that he made informal arrangements with Nizam Ali to appear at the restaurant and announce his candidacy. He said that these arrangements did not include any discussion regarding the exclusive use of the Cosmopolitan Room; and, he did not enter into a contractual agreement to reserve any portion of the restaurant. Mr. Bowers also stated that the event was organized as a press announcement for his At-large Member of the Council candidacy, which was open to the media and the general public. As evidence

thereof, he provided copies of a Media Advisory and a NewsRelease, wherein his intentions to announce his candidacy at Ben's Chili Bowl on Wednesday June 22, 2005 are noted. See Respondent's Exhibit #1.

According to Mr. SanFord, the witnesses were cooperative and credible.

Findings of Fact

Having reviewed the allegations and the total record herein, I find:

1. Respondent was the principal campaign committee for David Charles Bowers, a candidate seeking the office of an At-large Member of the D.C. Council in the 2006 Primary Election. See Attachment D.
2. Sometime in June 2005, Mr. Bowers arranged with Nizam Ali to appear at Ben's Chili Bowl Restaurant to announce his candidacy; and, did not arrange for exclusive use thereof of the Restaurant's Cosmopolitan Room. See Bowers Testimony.
3. Respondent issued a Media Advisory and a News Release, wherein Mr. Bowers invited the media, family, friends and supporters to Ben's Chili Bowl Restaurant, 1213 U Street, N.W., Washington, D.C., to announce his candidacy and to receive an endorsement from Virginia Ali. See Respondent's Exhibit #1.
4. On June 22, 2005, Mr. Bowers met the media, family, friends and supporters at Ben's Chili Bowl Restaurant, announced his candidacy and received an endorsement from Virginia Ali. See Ali, Payne and Bowers Testimonies.
5. The June 22, 2005 event at Ben's Chili Bowl Restaurant was open to other than the media, family, friends and supporters of David Charles Bowers for office because the Cosmopolitan Room was not made available to the exclusive use of respondent. See Ali Testimony.
6. The Cosmopolitan Room of Ben's Chili Bowl Restaurant has never been made available to the exclusive use of any person because it has always been economically feasible for that facility to remain open to the general public. Id.
7. Kamal Ali, Virginia Ali, Nizam Ali and Ben's Chili Bowl Restaurant each contributed \$1000 to respondent. See Attachment E.
8. Ben's Chili Bowl Restaurant is a sole proprietorship, of which Kamal Ali, Virginia Ali and Nizam Ali have no interest. See Ali Testimony.

Conclusions of Law

Based upon the record and evidence herein, I therefore conclude:

1. Respondent did not fail to disclose an in-kind contribution of the cost of the June 22, 2005 use of the Ben's Chili Bowl Restaurant Cosmopolitan Room, pursuant to D.C. Official §1-1102.06,

when it formally announced the candidacy of David Bowers for At-large Member of the D.C. City Council because the use of the Cosmopolitan Room did not constitute a "contribution of goods, services or property by the contributor to a political committee," pursuant to 3 D.C.M.R. §9900.1, inasmuch as at no time was its use segregated from the general public, to the exclusive benefit of respondent.

2. Respondent did not further fail to disclose an in-kind contribution of the cost of the June 22, 2005 use of the Ben's Chili Bowl Restaurant Cosmopolitan Room, pursuant to D.C. Official Code §1-1102.06, when it formally announced the candidacy of David Bowers for At-large Member of the D.C. City Council because the use of the Cosmopolitan Room did not constitute "a contribution of goods, services or property by the contributor to a political committee," pursuant to 3 D.C.M.R. §9900.1, inasmuch as Ben's Chili Bowl Restaurant has determined that the rental of the Cosmopolitan Room for exclusive use was not economically feasible and, therefore, did not, at any time, rent the facility.

3. Respondent did not receive contributions from the Ben's Chili Bowl Restaurant and its owners and their relatives which exceeded the contribution limitation of \$1000 in support of a candidate for the office of At-large Member of the D.C. City Council, pursuant to D.C. Official Code §1-1131.01(a)(3), the Ben's Chili Bowl Restaurant, Kamal Ali, Virginia Ali, and Nizam Ali are all distinct persons, pursuant to D.C. Official Code §1-1101.01(8), with the right to each contribute up to \$1000 to respondent; and, any other issue is moot inasmuch as respondent did not receive contributions which exceeded the contribution limitations from these persons.

Recommendation

I hereby recommend the Director to dismiss this complaint.

Date

Kathy S. Williams
General Counsel

ORDER OF THE DIRECTOR

IT IS ORDERED that this matter be dismissed. Attachments are available for review or copying in OCF, upon request.

This Order may be appealed to the Board of Elections and Ethics within 15 days from issuance.

Date

Cecily E. Collier-Montgomery
Director

SERVICE OF ORDER

This is to certify that I have served a true copy of the foregoing Order to complainant, respondent and other interested parties.

NOTICE

Pursuant to 3 D.C.M.R. §3711.5 (1999, as amended), any fine imposed by the Director shall become effective on the 16th day following the issuance of a decision and order, if the respondent does not request an appeal of this matter. If applicable, within 10 days of the effective date of this order, please make a check or money order payable to the D.C. Treasurer, c/o Office of Campaign Finance, Suite 433, 2000 14th Street, N.W., Washington, D.C. 20009.